



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2013)

Opinion

Title

DG MARKT - Impact Assessment on a Directive on single-member private limited liability companies

(draft version of 18 October 2013)*

(A) Context

Improving the business environment for companies and notably for SMEs is one of the key priorities in the Europe 2020 strategy. SMEs often find it costly and difficult to be active across borders and only a small number of SMEs invests abroad. This is due to many factors, including the diversity of national company laws and the lack of trust in foreign companies among customers and business partners. SMEs that want to gain the trust of their foreign clients tend to establish subsidiaries in other Member States. However, establishing a subsidiary abroad involves costs of meeting legal and administrative requirements in other countries, which are frequently different from those which companies are used to “at home”. The Commission aimed to address these obstacles in its 2008 proposal for a European Private Company Statue (SPE), which had to be finally withdrawn, as it didn't obtain the required level of Member State support. The 2012 Action Plan on European company law and corporate governance reaffirmed the Commission's resolve to build on the work carried out in the preparation of the SPE proposal, through further initiatives to enhance cross-border opportunities for SMEs.

(B) Overall opinion: POSITIVE

The report needs to be improved in a number of respects. First, it should explain in more detail why the SPE proposal was not adopted, and why a new initiative is needed now. This should include a clear description of the identified problems, underpinned with stronger evidence indicating their magnitude. In particular, the report should better explain and substantiate the relative importance of the identified issues, compared with other obstacles faced by companies wishing to establish abroad. The presentation of the options should be streamlined and unrealistic options discarded up-front. Moreover, the analysis should better describe the impacts on Member States, and better assess the impacts of the most controversial measures, such as the reduction of the minimum capital required, as well as, the possible social and employment impacts. In addition, given that set-up costs are only a subset of the total cost that need to be incurred, the report should better demonstrate the effectiveness of the retained options in encouraging the establishment of SMEs abroad. Finally, the report should better present the views of Member States and the most affected stakeholders, and should indicate how their concerns have been taken into account.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(C) Main recommendations for improvements

(1) Better describe the problems. The problem definition section should be enhanced by more clearly distinguishing the problems to be addressed from their underlying drivers. The report should substantiate the identified problems with stronger evidence, where possible quantitative. In particular, it should better explain the relative importance of the identified issues compared to other obstacles faced by companies wishing to establish abroad (e.g. language barriers, difficulties in accessing funding etc.). Furthermore, it should provide a clearer overview of the different situations prevailing in Member States. On this basis, the report should clarify the extent to which existing national rules render the establishment of companies more burdensome for foreign companies than for domestic ones. More importantly, the report should also explain the reasons why Member States have maintained those rules considered to be particularly cumbersome (e.g. identification requiring physical presence, registration via a notary or minimum capital requirements above €1) despite their acknowledged support for this initiative. In addition, considering the trend in Member States to streamline registration procedures (including via on-line tools), the report should better explain the added value of EU action, and explain why action needs to be taken now.

(2) Better present the options. The report should discard up-front those options that, in view of the discussions during the negotiations on the SPE, appear unrealistic. The retained options should then be better linked to the problems identified and better described so that it is clear what they imply. For example, the aim of certain measures, such as the solvency test, should be better explained. The report should also better justify why special rules for SMEs have not been retained as an option to be analysed.

(3) Better assess the impacts and the effectiveness of the retained option. The report should better describe, and quantify where possible, the impact on Member States, in particular regarding the obligation to provide for direct on-line registration. Likewise, it should better explain how the proposed measures may impact on domestic versus foreign companies, and better justify, based on evidence from relevant experience in Member States where available, why a reduction of the minimum capital required is not considered to lead to liability issues, or a loss of creditors'/consumers' trust. In addition, the exclusive focus on economic impacts should be adjusted in favour of a greater emphasis on social and employment impacts. Likewise, the report should assess possible risks of abuse and/or circumvention of applicable (social and other) rights in this context. Furthermore, considering that, once established, foreign owned companies would still face important operational costs because of the need to comply with the full array of domestic rules, the report should better demonstrate the effectiveness of the retained options in encouraging the establishment of SMEs abroad.

(4) Better present stakeholders views. The report should improve the presentation of the consultation results by systematically clarifying the views of each stakeholder group (instead of referring to the views of 'the majority of stakeholders'). In particular, the views of the different Member States, as well as of the most concerned stakeholders (e.g. SMEs, notaries), need to be clearly presented. The report should furthermore better explain how stakeholders' concerns (e.g. notaries') have been taken into account. In addition, more details on the consultation results should be provided, for instance, by including the summary of results of the 2013 on-line consultation as an annex.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The clarity of the text needs to be enhanced, for example, by presenting more information/data in tables or charts. Furthermore, the overall coherence should be improved, and repetitions avoided.

(E) IAB scrutiny process

Reference number	2014/MARKT/003
External expertise used	No
Date of IAB meeting	20 November 2013